

STATE OF MICHIGAN
COURT OF APPEALS

FREMONT MUTUAL INSURANCE CO.,

Plaintiff-Counter Defendant-Appellee,

v

CARL H. WISNIEWSKI and ANNA MARIE
WISNIEWSKI,

Defendants-Appellees,

and

ERICA ELLEN JANUSZEK, a minor by her
next friend, NEVA JANUSZEK,

Defendant-Counter Plaintiff-Appellant,

and

JOHN BRADY and ALICE BRADY,

Defendants-Appellees.

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, J.J.

PER CURIAM.

Erica Januszek, a minor by her next friend, Neva Januszek, appeals as of right from the trial court's order granting plaintiff's counter motion for summary disposition pursuant to MCR 2.116(C)(10) in this action for declaratory judgment. The trial court held, as pertinent, that plaintiff is not obligated to pay any judgment rendered in a negligence action Januszek filed against Carl and Anna Wisniewski and John and Alice Brady. We affirm.

UNPUBLISHED

July 29, 1997

No. 193046

Macomb Circuit Court

LC No. 95-002422-CZ

This insurance coverage dispute arose from a 1993 dog bite incident. While playing at 24785 Campbell in Warren (“Warren premises”), Erica Januszek was bitten by the Bradys’ dog. The Bradys have rented the Warren premises from the Wisniewskis since 1987. The Wisniewskis have not lived there since 1989.

Januszek filed a negligence action against the Bradys and Wisniewskis. The Wisniewskis asked plaintiff to defend them under their mobilowners insurance policy. Plaintiff subsequently filed a complaint against the Wisniewskis, the Bradys, and Januszek seeking a declaratory judgment that it had no duty to defend the Wisniewskis nor an obligation to pay any judgment that Januszek might recover in her negligence action. The trial court granted plaintiff’s motion for summary disposition, holding that plaintiff owed no duty to defend or pay any judgment rendered in Januszek’s negligence action.

We review of a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo. *McGuirk Sand & Gravel, Inc v Meridian Mutual Ins Co*, 220 Mich App 347, 352; 559 NW2d 93 (1996). An MCR 2.116(C)(10) motion for summary disposition tests the factual basis underlying the claim. *Id.*

The issues before us involve interpretation of an insurance policy. We must look at the language of the policy and construe its terms to ascertain the scope of its coverage. *Arco Industries Corp v American Motorists Ins Co*, 448 Mich 395, 402; 531 NW2d 168 (1995). We interpret the language of the insurance policy in light of its plain and ordinary meaning, avoiding technical and strained constructions. *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). If the contract is unambiguous, we must enforce it as written. *Id.* at 543. Clear and specific exclusions must be given effect. It is impossible to hold an insurance company liable for a risk it did not assume. *McGuirk Sand & Gravel, supra* at 353.

Plaintiff issued an insurance policy that named the Wisniewskis as the insureds. The insurance policy explicitly provides that the property “covered by this policy is 6518 E Loop Road, Caseville, MI.” Nevertheless, Januszek claims that the Warren premises are “insured premises”. She argues that the Warren premises fall within the following definition in the insurance policy:

Definitions: . . . “insured premises” is amended to read as follows:

* * *

all other premises and private approaches thereto for use of the Named Insured or his spouse in connection with the residence premises

We find that Januszek’s argument is flawed. First, to interpret the subsection in the requested manner, we would be forced to ignore its plain meaning. This subsection discusses the residence premises, i.e. the Wisniewskis’ Caseville property, and private approaches and premises that are used in connection with it, not unconnected temporary residences. Even if we were to find that the Wisniewskis temporarily resided at the Warren premises, we agree with the trial court’s opinion that

“[t]he referenced ‘connection’ refers to a [physical] connection between premises, not insureds or their family members.”

Second, although the insurance policy also provides coverage for temporary residences, Januszek failed to present evidence to support her contention that the Wisniewskis were temporarily residing at the Warren premises when the dog bite occurred. Carl Wisniewski testified that from 1990 or 1991 until 1996, he spent only one night at the Warren premises. Moreover, Januszek presented no evidence regarding the number of nights Anna Wisniewski spent at the Warren premises prior to the dog bite incident.

Further, even if the Warren premises met the definition of insured premises, it would be excluded by the insurance policy, which specifically
excludes . . . structures rented or leased in whole or in part or held for such rental or lease (except structures used exclusively for private garage purposes) to other than a tenant of the described dwelling.

The Warren premises fall squarely within this exclusion, as the Wisniewskis rent this property to the Bradys.

Januszek also argues that the Wisniewskis’ alleged negligence qualifies as a compensable “occurrence” under the policy. However, the insurance policy specifically excludes any coverage for bodily injury arising out of any premises other than an insured premise. The policy states:

This policy does not apply:

* * *

to bodily injury or property damage arising out of any premises, other than an insured premises, owned, rented or controlled by any insured

Since the Warren premises where the dog bite incident occurred is not an insured premise, the dog bite incident clearly falls within the exclusion. Hence, coverage is unavailable under the policy.

Finally, Januszek argues that the Bradys qualify as “insureds” under the insurance policy. The following definition is found in the policy:

“insured” means

- (1) the Named Insured stated in the Declarations of this policy;
- (2) if residents of the Named Insured’s household, his spouse, the relatives of either and any other persons under the age of twenty-one in the care of any Insured

Pursuant to this section, an insured must be listed in the declarations section of the policy, a resident of the named insured's household if a named insured's spouse or relative, or a person under the age of twenty-one who is in the care of an insured. The Bradys are not listed as insureds in the policy. Further, a "household" is defined as "those who dwell under the same roof and compose a family; *also*: a social unit comprised of those living together in the same dwelling." *Webster's Ninth New Collegiate Dictionary* (1991). Although the Bradys are the Wisniewskis' relatives, they are not members of the same household under the ordinary, plain meaning of the term "household", because they do not live in the same dwelling or dwell under the same roof with the Wisniewskis. Thus, the Bradys and the Wisniewskis are not members of the same household.¹ Therefore, the Bradys are not covered under defendant's policy.

Accordingly, we find that plaintiff owned no duty to pay any judgment obtained in Januszek's underlying negligence action against the Wisniewskis and Bradys. Accordingly, we find that the trial court did not err in granting plaintiff's motion for summary disposition.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Roman S. Gribbs

¹ No party is arguing that the Bradys are under twenty-one. Therefore, this Court assumes that they do not meet that criterion, either.